No. 324. So

Brief of Green for

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

Filed Sept. 9, 1899.

In the Supreme Court of the United States.

No. 324

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, PLAINTIFF IN ERROR,

versus

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

Error to the Supreme Court of Mississippi.

NOTICE, MOTION TO DISMISS OR AFFIRM AND BRIEF OF ARGUMENT.

MARCELLUS GREEN.
Attorney for Defendant in Error.

In the Supreme Court of the United States.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, ET ALS, PLAINTIFF IN ERROR,

VS.

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

Error from the Supreme Court of the State of Mississippi.

NOTICE OR MOTION TO DISMISS OR AFFIRM.

To Mr. Edward Mayes, Council for Plaintiff in Error:

You will please take notice that on Monday, October the 9th, 1899, at the opening of the court, or as soon thereafter as counsel can be heard, the motions of which the attached are copies, will be submitted to the Supreme Court of the United States, for the decision of said court thereon. Annexed hereto, also, is a copy of the brief of Argument to be submitted with the said motions in support thereof.

MARCELLUS GREEN,
Counsel for Defendant in Error,
for the purpose of these motions.

United States of America,
Circuit Court of the United States for the
Southern District of Mississippi.

Before me, L. B. Mosley, clerk of the said Circuit Court of the United States, for the Southern District of Mississippi, this day personally appeared Wirt Adams, the defendant in error in the

above styled cause, who being by me first duly sworn, on his oath says, that he this day served the foregoing notice with the annexed motion and brief of Argument, on Mr. Edward Mayes, the counsel of record for the plaintiffs in error, by delivering to him in hand and in person a true copy of said notice, motions and brief of Argument.

Sworn to and subscribed before me this ——day of ——— 1899, as witness my hand and seal of said Court.

——————— Clerk.

In the Supreme Court of the United States.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, PLANTIFFS IN ERROR,

vs.

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

Error from the Supreme Court of the State of Mississippi.

MOTION TO DISMISS OR AFFIRM.

Now comes the Defendant in Error, Wirt Adams, State Revenue Agent, by his counsel appearing in that behalf, and moves the court to dismiss the above entitled cause for want of jurisdiction in the Supreme Court of the United States to review the same. Because:

1. The judgment from which said appeal purports to have been taken is the judgment of the Supreme Court of one of the United States, to-wit: the Supreme Court of the State of Mississippi, and the record does not show that a Federal question was so directly involved that the State court could not have given judgment against Plaintiff in Error without deciding it.

2. Because no Federal question is involved in the case.

3. Because the pretended Federal question, was made up and plead after the opinion and judgment of the State court had settled the question of liability against the Plaintiff in Error.

And the said Defendant in Error, by counsel as aforesaid, also moves the court to affirm the said judgment from which

said appeal purports to have been taken, because, although the record in the case may show that this court has jurisdiction in the premises. Yet it is manifest that said appeal was taken for delay only.

MARCELLUS GREEN,
Counsel for Appellee for the purpose of these motions.

In the Supreme Court of the United States.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WIRT ADAMS, DEFENDANT IN ERROR.

Error from the Supreme Court of Mississippi.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR ON MOTION TO DISMISS OR AFFIRM.

STATEMENT.

This action was brought on the authority of the Yazoo & Mississippi Valley Railroad Company vs. Thomas, 65 Miss., 562, affirmed, 132 U. S. 174, to recover municipal taxes.

The question involved in this case is, whether the exemption granted by the Legislature of Mississippi, in section 8 of Appellant's charter, (Special Record, page 8,) was unconditional as to municipal taxes, or whether under the provisions of the charter the road had to be completed to the Mississippi river in order to earn the exemption, as had been held in the Thomas case supra, as to State taxes.

On a consideration of this question, on demurrer to the Revenue Agent's declaration the trial court held in its judgment that the exemption was perpetual and unconditional as to municipal taxes, and on this ground dismissed the suit.

(Special record, page 6.)

On appeal to the Supreme Court of the state, this ruling was assigned by the Revenue Agent for error, (Special Record page 7) and the Supreme Court reversed the judgment of the lower court, and held, as was contended by the Revenue Agent, that the exemption was conditional, and the case was remanded to be proceeded with in accord with that opinion.

(Special Record page 10.)

When the case came before the lower court for a second hearing, appellant filed four pleas :

1. The general issue.

2. That the road had been completed to the river by a consolidation with other railroads.

3. A release from taxation granted by the municipal authorities of the city of Jackson.

4. A lease from appellant to the Illinois Central Railroad Company, the granting of appellant's charter and the refusal of the legislature to repeal its exemption, and the overruling of the Cook case by the Supreme Court.

The plea of reaching the river by consolidation with other roads is manifestly without merit, as this could not have been within the meaning or purpose of the legislature.

As to the third plea :—The Municipal Authorities of the city of Jackson were wholly without authority of law to grant exemption, and such grant by them was in violation of the State Constitution, providing that taxation shall be equal and uniform.

Con. of Miss., 1869 Sec. 20, Art. 12, and section 112 Con. 1890.

The Court's ruling on this is upheld by all the authorities.

Dillon Mun. Cor. Vol. 2, Note 1, Sec. 781.

None of the facts set out in the 4th plea had any bearing upon the matter in controversy ; it was frivolous and could have no place in the case, except to attempt by going outside of the matter in dispute to raise a federal question and by an appeal to this court, delay the payment of taxes.

The second, third and fourth pleas were demurred to on the grounds above indicated, and the demurrers were sustained.

It is admitted in the agreed statement of fact (Special Record page 30), upon which the case went to trial under the general issue : that there had never been a manual construction of the road to the Mississippi River, that the road ran through the towns mentioned in the declaration and that the assessments and levies were properly made.

Judgment was rendered in the lower court on the second trial, for the State Revenue Agent, and on appeal, this judgment was affirmed by the Supreme Court, (Special Record page 35) and from that final judgment of the State court of last resort, this appeal is taken.

BRIEF.

The first ground in Appellant's Assignment of Error on this appeal, that certain Mississip pi legislation, prescribing the duties and defining the powers of the State Revenue Agent, is subsequent legislation to the granting of its charter and that it impairs its contract rights, gives no jurisdiction for two reasons, first: it is a question that was never presented to, and the State court had no opportunity to pass upon it.

Miller vs. Texas, 153 U. S., 535.
Morrison vs. Watson, 154 U. S., III.

The statute must be specially set up by the party and the decision must have been against the claim.

Montgomery vs. Harnandez, 12 Wheat, 129.

The right on which the party relies must have been called to the attention of the court below, in some way, and the decision of that court must have been against the right claimed.

Maxwell vs. Newbold, 18 How, 511.
Hayward vs. Denny, 158 U. S., 180.
Miller vs. Cornwall R. R. Co., 168 U. S., 131.
Union Mutual Ins. Co. vs. Kirchoff, 169 U. S., 103.

Second. This Legislation is purely remedial; an alteration in the States agency for the transaction of her business, it in no wise alters or attempts to alter or abridge any right or defence. Nor does it impair any contract right of appellant or of any person. The absurd contention is here made, that it is an impairment of contractual rights to appoint or change an agent for the collection of money due.

As to the second and third ground, the court will see, from the pleadings the facts and the opinion of the Supreme Court on the first and second trial, that this case simply involved a construction of a State statute unimpaired by any subsequent legislation.

"This court is bound by the decision of a State court in regard to the meaning of the Constitution and laws of its own State, and its decision upon such state of facts raises no Federal question."

Turner vs. Wilkes County, 173 U. S., 161.

On a writ of error to a State court, this court cannot take jurisdiction under the allegation that contract has been im-

paired by a decision of that court, when it appears that the State court has done nothing more than construe its own constitution and statutes, there being no subsequent legislation touching the subject.

Turner vs. Wilkes Co., 173 U. S., 161.

It has been repeatedly announced by this court: "That when we find it unnecessary to decide any Federal question, and when the state court has based its decision on a local or state question, our logical course is to dismiss the writ of error.'

Eutis v. Bolles, 150 U. S., 361.
Fort Smith R. R. Co., vs. Merriam, 156 U. S., 478.
Hamlin vs. Western Land Co., 147 U. S., 674.
Costells vs. McConnico, 168 U. S., 674.
Remington Paper Co. vs. Watson 173 U. S., 443.

The matter set out in the third ground of the assignment, as to whether or not the road was completed to the river confers no jurisdiction, it being wholly as to a question of fact.

Dower vs. Richards, 151 U. S., 658.
Egan vs. Hart, 165 U. S., 188.
Hedrick vs. Ry. Co., 167 U. S., 673.

As to the 4th and last ground of the assignment: No Federal question is involved when the Supreme Court of a state decides that a municipal corporation within the state has not power, under the constitution and laws of the state, to make the contract sued on.

Missouri &c. vs. Harris, 144 U. S., 210.

If, however, a federal question was presented, and the case decided upon on independent ground, broad enough to maintain the judgment, and not involving Federal law, this court will dismiss the writ of error without considering the Federal question.

Beatty vs. Benton, 135 U. S., 244.
Marrow vs. Brinkley, 129 U. S., 178.
Hale vs. Akers, 132 U. S., 554.
Eagan vs. Hart 165, U. S., 188.

On the ground that this court has no jurisdiction because no Federal question is involved or that the decision of the state court is based upon sufficient ground, independent of any Federal question, we ask that the writ of error be dismissed, or that the judgment be affirmed.

MARCELLUS GREEN.
Attorney for Defendant in Error.